IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3316 of 2000

with

SPECIAL CIVIL APPLICATION No 7735 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALLAUDIN DAUDBHAI AJMERI

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 3316 of 2000
   MR AK CLERK for Petitioner No. 1
   MR RM CHHAYA for Respondent No. 1
2. Special Civil Application No. 7735 of 2000
   MR RM CHHAYA for Petitioner No. 1
   ..... for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/10/2001

ORAL JUDGEMENT

Rule. So far as Special Civil Applicaiton No.3316 of 2000 is concerned, Mr.Chhaya waives service of rule on behalf of the respondent and so far as Special Civil Application No.7735 of 2000 is concerned, Mr.Clerk waives service of Rule on behalf of the respondent.

With the consent of the parties, the matters are taken up for final hearing today.

So far as Special Civil Application No.3316 of 2000 is concerned, the same is filed by the workman, seeking a direction to the Corporation to reinstate the petitioner on an alternative post having the same pay scale as that of the driver in compliance with the Award of the Labour Court in Reference (LCA) No.995 of 1998.

The petitioner workman had raised the aforesaid Industrial Dispute, which was referred to the Labour Court, Ahmedabad and was numbered as Reference (LCA) No.995 of 1998, wherein he had prayed for reinstatement with full back wages. The concerned workman was appointed in the Central Workshop of the Corporation by an order dated 31st May, 1986. He was entrusted with the work of Workshop Driver. His services were terminated on 27.2.1987 on the ground of colour blindness. The aforesaid action, ultimately, resulted in the aforesaid industrial dispute. The workman claimed for reinstatement with full back wages for the intervening period. The Presiding Officer, Labour Court, Ahmedabad, by his Award dated 29th May, 1999, allowed the said Reference and the Corporation was directed to reinstate the petitioner-workman on any other job if vacancy is available without back wages. Since no alternative job was provided, the petitioner-workman challenged the said action by way of filing Special Civil Application No.3316 of 2000.

So far as the Corporation is concerned, having felt aggrieved by the direction given by the Labour Court, they filed Special Civil Application No.7735 of 2000. Since both the petitions involve common questions of law and facts, both are heard together.

During the pendency of both these petitions, the Deputy Municipal Commissioner passed an order dated 6th January, 2001, by which the petitioner was given appointment on the vacant post of `Ghankari'. As per the said order, the post is also prescribed in Central Workshop in Schedule No. 38/3. He was appointed as a daily rated employee on the aforesaid post. The aforesaid order is produced at page 35 of the

compilation. Subsequently, he was sent for medical examination and he was medically found fit for the aforesaid post. The said medical certificate is also produced on record. Accordingly, the petitioner-workman is serving on the said post. However, the earlier order was a limited order for three months and the same was not extended. The petitioner-workman, therafter, filed Civil Application No.4850 of 2001 and this Court (Coram : R.R. Tripathi, J.), by its order dated 24th July, 2001, ordered that the petitioner-workman should be continued on the aforesaid post of `Ghankari', with effect from 1st April, 2001 onwards. It seems that, however, in spite of the said order in the aforesaid Civil Application, no such alternative work was given to the petitioner and today, at the time of hearing of these Special Civil Applications, Mr.Chhaya, learned Advocate for the petitioner, placed on record a copy of the order dated 19.9.2001. By the aforesaid order, the petitioner has been given employment for a period of three months on the aforesaid vacant post of `Ghankari'. The aforesaid order is taken on record. It is, therefore, not in dispute now that the petitioner has been given appointment on the vacant post of `Ghankari' on daily rated basis for a period of three months.

So far as the Award of the Labour Court is concerned, it is required to be noted that the the Labour Court has considered the opinion given by the Medical Board, which was found to be an Expert Body in Ophthalmology. The Labour Court came to the conclusion that the concerned workman was appointed as a Driver in the year 1982 as a daily wager. The Labour Court, after considering the fact that in view of the Medical Report of the Expert Body, the petitioner can be given any other alternative work. The Labour Court has also considered the Award passed in earlier case, i.e. in the case of one A.T. Pathan. After considering the totality of the facts and circumstances of the case and after considering the medical opinion at Exhibits 30, 31 and 34, it was observed by the Labour Court that the petitioner can be accommodated in any job. Reference was accordingly allowed by order dated 29.5.1999 and it was directed that the petitioner may be reinstated on any other job if vacancy is available, but without back wages.

Mr.Clerk, learned Advocate for the petitioner also argued that in similar type of cases, other employees were absorbed on alternative posts. In my view, therefore, considering the reasoning of the Labour Court and especially considering the fact that now the Corporation itself has given alternative employment to

the present petitioner by appointing him on a vacant post of `Ghankari' on a daily rated basis, I do not think that any interference of this Court is now required by entertaining this petition under Article 226/227 of the Constitution of India. This is not a fit case in which I should exercise my extraordinary jurisdiction by interfering with the order of the Labour Court. Both the learned Advocates have fairly stated that the petitioner is discharging his duties satisfactory, though, of course, the order which has been given by the Labour Court is subject to the result of the petition. However, in the facts and circumstances, in my view, the order of the Labour Court is required to be confirmed and no interference is required by this Court. Accordingly, both these petitions are required to be disposed of.

The Corporation is directed to continue the petitioner on the same post and on the same terms on which he has been given appointment on the alternative post of `Ghankari' by the order dated 19.9.2001. It is directed that the Corporation should continue him on daily rated basis on the same post and will continue to give the benefits which are given to the other such similarly situated employees. Accordingly, the petitioner is treated to have been reinstated on the post of Ghankari on daily rated basis and he will be entitled to continue on the said post. It is clarified that the petitioner will not be entitled to any back wages for the entire period and he will be entitled to his regular wages on the basis of his reinstatement on the post of `Ghankari' on the clear vacancy of `Ghankari' and he will be entitled to his regular salary from 19.9.2001, i.e. the date on which he has been reappointed. Mr.Chhaya, learned Advocate for the petitioner in the connected Special Civil Application No.7735 of 2000, submitted that the workman is actually reappointed from 24th September, 2001. In that case, he will be entitled to his regular salary from that date. However, for all other purpose, the petitioner's service should be treated to have been continued.

The order of the Labour Court is accordingly modified to the aforesaid extent as indicated in this order. Both these Special Civil Applications are accordingly disposed of on the basis of the directions given hereinabove. Rule is discharged with no order as to costs.

(P.B. Majmudar, J.)

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(apj)